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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GILBERT JAY PALIOTTA,
Plaintiff,

v.

BROOKS, et al.,
Defendants.

3:09-cv-0194-RCJ-RAM

ORDER

Before the Court is the Report and Recommendation of U.S. Magistrate Judge Robert A. McQuaid, Jr., (#28¹) entered on February 3, 2011, recommending Defendants' motion to dismiss be granted. Plaintiff filed his Objection to the Report and Recommendation (#29) on February 14, 2011, and Defendants filed a Response to Objection (#30) on February 18, 2011.

The Court has conducted its *de novo* review in this case, has fully considered the objections of the Plaintiff, the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and Recommendation (#28) entered on February 3, 2011, should be adopted and accepted.

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#28) entered on February 3, 2011, is adopted and accepted, and Defendants' Motion to Dismiss (#23) is GRANTED as follows:

All of Plaintiff's claims asserted in Paliotta II are dismissed with prejudice as to all named Defendants as a result of claim preclusion, except that:

(1) Plaintiff's potential Eighth Amendment claim arising from the February 11 and 13, 2008 alleged incidents of assault is dismissed without prejudice because Plaintiff fails to link any named

¹Refers to court's docket number.

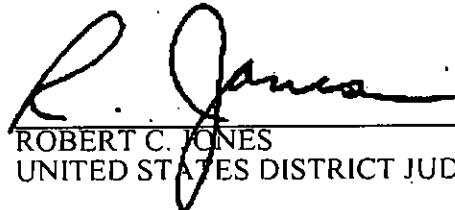
1 Defendant with the alleged constitutional violation;

2 (2) Plaintiff's potential First Amendment claim of access to the courts arising from the February
3 11, 2008 search of his cell is dismissed without prejudice because Plaintiff failed to link any named
4 Defendant with the alleged constitutional violations;

5 (3) Plaintiff's potential state law claims under NRS arising from the February 11 and 13, 2008
6 alleged incidents of assault are dismissed without prejudice because the court declines to exercise
7 supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

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9 IT IS SO ORDERED.

10 DATED: This 25th day of February, 2011.

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13 ROBERT C. JONES
14 UNITED STATES DISTRICT JUDGE
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